APPEAL NO. 002588

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 5, 2000, and October 4, 2000. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 17th and 18th quarters. Appellant self-insured ("carrier" herein) appealed this determination on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that the hearing officer erred in admitting the August 2, 2000, report from claimant's treating doctor, Dr. S, because it was not timely exchanged. Carrier asserts that the report, which was written after the benefit review conference, was not exchanged "as it [became] available," pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). The hearing officer found good cause for any late exchange of the letter. *See* Rule 142.13(c)(3). Claimant said his attorney was to have obtained the evidence, but he ended up getting it from the doctor himself and then discharging the attorney. Claimant said he gave the letter to the ombudsman on August 24, 2000, when he obtained it, and apparently it was exchanged within a few days of that date. We conclude that the hearing officer did not abuse his discretion in this case.

Carrier contends that the hearing officer erred in determining that claimant is entitled to SIBS for the 17th and 18th quarters. Carrier contends that claimant did not establish that he had no ability to work, so he should have looked for work during the qualifying periods, which were from October 17, 1999, to April 13, 2000. The applicable law regarding good faith and no ability to work, along with our standard of review, are discussed in Texas Workers' Compensation Commission Appeal No. 001865, decided September 25, 2000.

We first note that carrier refers to a March 1998 medical report and claims that claimant's treating doctor stated that claimant should be sent for retraining at the Texas Rehabilitation Commission. However, this report is not in the record. The record contains an August 2, 2000, letter in which Dr. S discusses the off-work status and also a medical report written during the qualifying period, in which Dr. S stated that: (1) a physical examination showed tight lumbar muscles with restricted motion and motor and sensory disturbance in the lower extremities; (2) weakness, locking, catching, crepitation, and giving way of the right knee; (3) a small inferior surface tear of the posterior horn of the lateral meniscus; (4) early chondromalacic changes of the patella; and (5) a knee brace has been ordered because claimant did not want knee surgery. Dr. S's medical records state that claimant's prognosis is "guarded." The hearing officer determined that claimant had no ability to work and that Dr. S's statement regarding claimant's work ability "is more than

conclusory when considered with other evidence of claimant's inability to work." The hearing officer noted that carrier did not offer evidence that claimant had an ability to work. Carrier complained that the hearing officer determined that claimant's medications prevented him from driving, noting that claimant said he drove himself to the hearing. However, the hearing officer could still consider the medical evidence as a whole and determine that claimant had no ability to work during the qualifying periods in question.[1] Claimant testified that his doctor told him not to drive while taking his medications and said they make him drowsy. We perceive no error. After reviewing the record, we conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge

[1]The "narrative report" need not be one report, but can consist of numerous reports, which in the aggregate explain how the injury causes a total inability to work. *See* Texas Workers' Compensation Commission Appeal No. 001119, decided June 20, 2000.